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01USFP659-M.K.**REMARKS**

Entry of this Amendment is proper because it narrows the issues on appeal and does not require further searching by the Examiner.

Claims 1-26 are all of the claims presently pending in the present Application. Claims 1, 3, 6-8, 12-13 and 20-22 have been amended to more particularly define the claimed invention.

It is noted that the claim amendments herein are made only for more particularly pointing out the invention, and not for distinguishing the invention over the prior art, narrowing the claims, or for any statutory requirements of patentability.

Further, it is noted that, notwithstanding any claim amendments made herein, Applicants' intent is to encompass equivalents of all claim elements, even if amended herein or later during prosecution.

Claims 1-26 stand rejected under 35 U.S.C. § 112, second paragraph as being allegedly indefinite.

Claims 1-3, 8-9, 14-15 and 17-20 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Ma et al. (U.S. Patent No. 6,795,867). Claims 4-7, 10-13, 16, 21-23 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ma et al. in view of Mortsolf et al. (U.S. Patent No. 6,229,804). Claims 24-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ma et al. in view of Mortsolf, and further in view of Kliland et al. (U.S. Patent No. 6,738,383).

These rejections are respectfully traversed in view of the following discussion.

I. THE CLAIMED INVENTION

The claimed invention (e.g., as recited in claim 1) is directed to a gatekeeper connected to an H323 network. The gatekeeper includes a first message receiving section which receives a gatekeeper discovery message from an end point, a transport data transmitting section, and a control section.

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Importantly, the control section autonomously monitors a load state of another gatekeeper in said network by receiving a message from said another gatekeeper, said message including a load state of said another gatekeeper (Application at page 15, line 16-page 16, line 23).

In conventional networks, when a gatekeeper receives a gatekeeper discovery message from an end point, if the gatekeeper can register the data of the end point the gatekeeper sends back a registration possible message regardless of the condition of other gatekeepers. Thus, the load of a gatekeeper can become much heavier or much lighter than other gatekeepers in the network (Application at page 2, lines 1-16).

In the claimed invention, on the other hand, a gatekeeper may include a control section which autonomously monitors a load state of another gatekeeper in said network by receiving a message from said another gatekeeper, said message including a load state of said another gatekeeper (Application at page 15, line 16-page 16, line 23). That is, in the claimed invention, the gatekeepers do not necessarily have a dependency relationship (e.g., may operate independent of one another) but may share information (e.g., load stated information) with each other. Further, the gatekeepers may autonomously determine which of the gatekeepers has a lightest load. As a result, a load for an end point can be prevented from centering on a specific gatekeeper, and can be efficiently distributed among gatekeepers in the network (Application at page 20, line 24-page 21, line 3).

II. THE 35 USC 112, SECOND PARAGRAPH REJECTION

The Examiner alleges that claims 1-26 are indefinite. Applicant submits, however, that these claims are clear and are not indefinite.

The Examiner alleges that the meaning of the term "load state list" is unclear "from the context of the claim". However, in claim 1, for example, the claimed invention is defined as including a control section which "... refers to a load state list to determine whether said gatekeeper has the lightest load among a plurality of gatekeepers including said gatekeeper."

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The Application states that the load state list may be generated "based on the comparing results of the calculated load state of the gatekeeper GK1 and the load states contained in the received load state request messages or load state notice messages" (Application at page 13, lines 5-10), and in another exemplary aspect, the "present load states of the gatekeepers are arranged in a lower order in the load state list" (Application at page 18, lines 13-14).

Thus, Applicant submits that the term "load state list" as used in the context of the claims is clearly described in the Application. Therefore, the invention in claims 1-26 is clearly defined and these claims are not indefinite.

In view of the foregoing, the Examiner is respectfully requested to withdraw this rejection.

III. THE ALLEGED PRIOR ART REFERENCES

A. Ma

The Examiner alleges that Ma teaches the claimed invention of claims 1-3, 8-9, 14-15 and 17-20. Applicant submits, however, that there are elements of the claimed invention which are neither taught nor suggested by Ma.

Ma discloses a telephony system which allegedly manages gatekeeper load by redirecting calls from an assigned gatekeeper to a servicing gatekeeper during call setup. Specifically, the system includes a gatekeeper having a load management unit (LMU) which processes all setup messages. In particular, the LMU selects a gatekeeper in the network to setup and service the call and, based on the selection, either directs the assigned gatekeeper to setup and service the call or redirects the endpoint to a servicing gatekeeper (Ma at col. 2, lines 43-65).

However, Ma does not teach or suggest a control section which *"autonomously monitors a load state of another gatekeeper in said network by receiving a message from said another gatekeeper, said message comprising a load state of said another gatekeeper"* as recited, for example, in claims 1 and 20 and similarly recited in claim 8. As noted above, this helps to

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prevent a load for an end point from centering on a specific gatekeeper, such that the load can be efficiently distributed among gatekeepers in the network (Application at page 20, line 24-page 21, line 3).

Clearly, these novel features are not taught or suggested by Ma. Indeed, the Examiner essentially concedes that Ma does not teach or suggest this feature by stating on page 12 of the Office Action that "Ma does not disclose exchanging message between gatekeepers..."

Further, the Examiner again attempts to equate the LMU in Ma with the control section of the claimed invention. However, **nowhere does Ma teach or suggest that the LMU in a gatekeeper receives a message from another gatekeeper, the message including a load state of the another gatekeeper.**

Indeed, Ma teaches that Gateway 104 "performs initial call setup by sending a setup message" to Gatekeeper 108 which "passes the setup message to a LMU" (Ma at col. 5, line 63-col. 6, line 9). Upon receiving the setup message, the LMU determines which gatekeeper will service the call (Ma at col. 5, lines 10-12). **This is all that Ma says about the setup message.**

Thus, the only message that the LMU receives is a setup message. However, nowhere does Ma teach or suggest that the setup message includes any information about another gatekeeper, let alone a load state of another gatekeeper. Thus, Ma certainly does not teach or suggest that the LMU receives a message from another gatekeeper, the message including a load state of another gatekeeper.

Further, the Examiner again alleges that "it is inherent in Ma that a memory/storage exists in LMU for holding and maintaining the current load information". However, nowhere does Ma teach or suggest that the LMU "holds and maintains current load information". The Examiner simply makes this up to suit his needs.

Again, as Applicant has pointed out to the Examiner (and to which the Examiner has not responded) it is clearly possible that the operations of Ma could be performed without "holding and maintaining current load information" in the LMU and, thus, without including a

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memory/storage in the LMU. That is, it is possible to select a servicing gatekeeper based on loading without using some memory/storage in the LMU.

Further, Applicant would again point out that the fact that a certain result or characteristic may occur or be present in the prior art is **not sufficient to establish the inherency** of that result or characteristic (MPEP 2112, citing *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). In relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic **NECESSARILY** flows from the teachings of the applied prior art. *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).

In this case, the Examiner has clearly failed to show that the LMU **NECESSARILY** includes a memory/storage as alleged by the Examiner. Therefore, the Examiner has failed to establish a memory/storage is inherent in the LMU in the Ma device.

Further, with respect to claim 15, the Examiner alleges that each gatekeeper in Ma "inherently comprises a ratio of actual to maximum registrations since each gatekeeper comprises a theoretical maximum number of supportable connections" (Office Action at page 6). However, the Examiner's reading of claim 15 is superficial.

Indeed, the control section in claim 1 "*controls said transport data transmitting section to transmit transport data to said end point in response to the gatekeeper discovery message, when it is determined that said gatekeeper has the lightest load*", and claim 15 recites that the "load" recited in claim 1 "*comprises a ratio of a number of actual registrations to a maximum number of registrations which can be registered by said gatekeeper*". That is, in claim 15, transport data is transmitted to the end point in response to the gatekeeper discovery message, when it is determined that the gatekeeper has the lightest ratio of a number of actual registrations to a maximum number of registrations which can be registered by the gatekeeper. Nowhere is this taught or suggested by Ma.

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Therefore, Applicant submits that there are elements of the claimed invention that are not taught or suggested by Ma. Therefore, the Examiner is respectfully requested to withdraw this rejection.

B. Mortself

The Examiner alleges that Ma would have been combined with Mortself to form the invention of claims 4-7, 10-13, 16, 21-23 and 26. Applicant submits, however, that these references would not have been combined and even if combined, the combination would not teach or suggest each and every element of the claimed invention.

Mortself discloses an election protocol for an Internet telephony system in one gatekeeper is elected to be an active gatekeeper. The system sorts the gatekeepers into a hierarchy with the highest ranked gatekeeper designated to respond to request messages, while the other gatekeepers stand by in idle mode and do not respond to gatekeeper requests (Mortself at Abstract).

Applicant respectfully submits that these references would not have been combined as alleged by the Examiner. Indeed, these references are completely unrelated, and no person of ordinary skill in the art would have considered combining these disparate references, absent impermissible hindsight.

Specifically, in direct contrast to Mortself which sorts the gatekeepers into a hierarchy with the highest ranked gatekeeper designated to respond to request messages, Ma merely teaches that a first gatekeeper may redirect a call to a second gatekeeper **based only on the load on the first gatekeeper**. Nowhere does Ma teach or suggest that the first gatekeeper considers whether the first gatekeeper has a greater load than the second gatekeeper. Indeed, nowhere does Ma even teach or suggest that the **relative loads** among the gatekeepers is ever considered in any context. Therefore, Ma is completely unrelated to Mortself.

Further, these references clearly do not teach or suggest their combination. Therefore, Applicant respectfully submits that one of ordinary skill in the art would not have been so

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motivated to combine the references as alleged by the Examiner. Therefore, the Examiner has failed to make a prima facie case of obviousness.

Moreover, neither Ma, nor Mortsof, nor any alleged combination teaches or suggests a control section which *"autonomously monitors a load state of another gatekeeper in said network by receiving a message from said another gatekeeper, said message comprising a load state of said another gatekeeper"* as recited, for example, in claims 1 and 20 and similarly recited in claim 8. As noted above, this helps to prevent a load for an end point from centering on a specific gatekeeper, such that the load can be efficiently distributed among gatekeepers in the network (Application at page 20, line 24-page 21, line 3).

Clearly, these novel features are not taught or suggested by Mortsof. Indeed, the Examiner has not even alleged that this feature is taught or suggested by Mortsof.

In fact, Mortsof simply teaches that when a gatekeeper is brought on line, it sends an active gatekeeper message an assertion of active status and a priority value of the gatekeeper. An other gatekeeper compares this priority value with its priority values and if the other gatekeeper has a higher priority value, the other gatekeeper broadcasts an active gatekeeper message. This is reiterated until no more active gatekeeper messages are sent (Mortsof at col. 4, line 21-col. 5, line 7).

However, nowhere does Mortsof teach or suggest that the active gatekeeper message includes a load state of a gatekeeper. Indeed, Mortsof teaches that the priority value "may be based on network addresses, chassis serial number, operator assigned numbers, or any other method (essentially unimportant) by which a unique value can be ascribed to a gatekeeper" (Mortsof at col. 4, lines 26-30).

Moreover, even assuming (arguendo) that the active gatekeeper message in Mortsof may somehow include a load state of a gatekeeper, nowhere does Mortsof teach or suggest that the gatekeeper includes control section that *"autonomously monitors a load state of another gatekeeper"*. Indeed, for example, in an exemplary aspect, a gatekeeper may periodically receive

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a message including a load state of another gatekeeper (Application at page 14, lines 16-24). Nowhere does Mortsoff teach or suggest that a gatekeeper autonomously monitors a load state of another gatekeeper.

Therefore, Applicant submits, however, that these references would not have been combined and even if combined, the combination would not teach or suggest each and every element of the claimed invention. Therefore, the Examiner is respectfully requested to withdraw this rejection.

C. Kliland

The Examiner alleges that Ma would have been combined with Mortsoff and Kliland to form the invention of claims 24-25. Applicant submits, however, that these references would not have been combined and even if combined, the combination would not teach or suggest each and every element of the claimed invention.

Kliland teaches an arrangement for distributing and dispatching traffic in a network, by inserting an internal (e.g., arranged in a certain domain) and lightweight (e.g., supporting a limited range of the H.323 message set) gatekeeper between an endpoint and a real gatekeeper (Kliland at Abstract; Figure 5).

Applicant respectfully submits that these references would not have been combined as alleged by the Examiner. Indeed, these references are unrelated, and no person of ordinary skill in the art would have considered combining these disparate references, absent impermissible hindsight.

Specifically, in contrast to Ma and Mortsoff, Kliland teaches using an internal (e.g., arranged in a certain domain) and lightweight (e.g., supporting a limited range of the H.323 message set). Thus, these references clearly do not teach or suggest their combination. Therefore, Applicant respectfully submits that one of ordinary skill in the art would not have been so motivated to combine the references as alleged by the Examiner. Therefore, the

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Examiner has failed to make a prima facie case of obviousness.

Moreover, neither Ma, nor Mortsoff, nor Kliland, nor any alleged combination teaches or suggests a control section which *"autonomously monitors a load state of another gatekeeper in said network by receiving a message from said another gatekeeper, said message comprising a load state of said another gatekeeper"* as recited, for example, in claims 1 and 20 and similarly recited in claim 8. As noted above, this helps to prevent a load for an end point from centering on a specific gatekeeper, such that the load can be efficiently distributed among gatekeepers in the network (Application at page 20, line 24-page 21, line 3).

Clearly, these novel features are not taught or suggested by Kliland. Indeed, the Examiner has not even alleged that this feature is taught or suggested by Kliland.

In fact, Applicant would point out that Kliland teaches that a lightweight gatekeeper has knowledge of valid real gatekeepers' load (Kliland at col. 3, lines 9-11) and that load information might be exchanged between a real gatekeeper and a lightweight gatekeeper (Kliland at col. 3, lines 55-58).

However, nowhere does Kliland teach or suggest a control section of a gatekeeper that **autonomously monitors** a load state of an other gatekeeper in the network **by receiving a message** from the other gatekeeper, said message including a load state of the other gatekeeper. That is, simply having knowledge of a real gatekeeper's load or exchanging load information is not necessarily "autonomously monitoring" a load state of the real gatekeeper.

Therefore, Applicant submits, however, that these references would not have been combined and even if combined, the combination would not teach or suggest each and every element of the claimed invention. Therefore, the Examiner is respectfully requested to withdraw this rejection.

IV. FORMAL MATTERS AND CONCLUSION

In view of the foregoing, Applicant submits that claims 1-26, all the claims presently

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pending in the application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Attorney's Deposit Account No. 50-0481.

Respectfully Submitted,

Date: 11/14/06Phillip E. Miller
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the foregoing Response was filed by facsimile with the United States Patent and Trademark Office, Examiner Donald L. Mills, Group Art Unit # 2662 at fax number 571-273-8300 this 14th day of November, 2006.

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